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MAILED

OCT 13 2010

OFFICE OF PETITIONS

In re Application :
Nag, et al. :
Application No. 09/689,222 : PATENT TERM ADJUSTMENT
Filing or 371(c) Date: October 11, 2000 :
Dkt. No.: PROM0005 :

This is in response to the application for patent term adjustment filed September 13, 2010. This matter is being properly treated under 37 CFR 1.705(b) as an application for patent term adjustment.

The application for patent term adjustment is GRANTED TO THE EXTENT INDICATED HEREIN.

The Notice of Allowance mailed June 15, 2010 indicates that the application is entitled to a patent term adjustment of 785 days. The instant application for patent term adjustment was timely filed in accordance with 37 CFR 1.705(b).

Applicants assert that the instant application is entitled to 1297 days of adjustment pursuant to 37 CFR 1.703(b).

Applicants also assert that the overall patent term adjustment is subject to further reduction as set forth in applicants' Exhibit A.

37 CFR 1.702(b)

Insofar as the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, the application for patent term adjustment under 37 CFR 1.705(b) is DISMISSED as PREMATURE.

Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See, § 1.702(b). (This is true even where a request for continued examination (RCE) was filed). The computer will not undertake the § 1.702(b) calculation until the actual date of issuance of the patent has been determined. Likewise, the computer will not calculate any further Office delay under § 1.702(a)(4) or applicant delay under § 1.704(c)(10) until the actual date of

issuance of the patent has been determined. As such, the Office can not make a determination on the correctness of the patent term adjustment until the patent has issued.

Requesting reconsideration of the patent term adjustment to be indicated on the patent based on the initial determination of patent term adjustment and a projected issuance date of the patent (or even the filing date of the request for continued examination) is premature. Accordingly, it is appropriate to dismiss as premature such a request.

Applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term adjustment pursuant to 37 CFR 1.705(d). As the USPTO does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent. However, as to all other bases for contesting the initial determination of patent term adjustment received with the notice of allowance, applicant must timely file an application for patent term adjustment prior to the payment of the issue fee¹.

Any request for reconsideration of the patent term adjustment indicated on the patent must be timely filed within 2 months after issuance pursuant to 37 CFR 1.705(d) and **must** include payment of the required fee under 37 CFR 1.18(e).

37 CFR 1.704

In addition to the applicant delay totalling 175 days, as asserted by the applicants, the overall patent term adjustment as of the time of allowance is subject to an additional reduction totalling 725 days.

The adjustment is subject to a reduction of 642 days pursuant to 37 CFR 1.704(c)(3)(ii). The reduction commenced November 27, 2005 and ended August 30, 2007.

The adjustment is subject to a reduction of 61 days pursuant to 37 CFR 1.704(c)(8). The reduction commenced June 26, 2009 and ended August 25, 2009.

¹ For example, if applicant disputes both the calculation of patent term adjustment under 37 CFR 1.702(a)(1) for Office failure to mail a first Office action or notice of allowance not later than fourteen months after the date on which the application was filed and under 37 CFR 1.702(b) for Office failure to issue a patent within three years of the actual filing date of the application, then applicant must still timely file an application for patent term adjustment prior to the payment of the issue fee to contest the calculation of Office delay in issuing a first Office action or notice of allowance. See 37 CFR 1.705(b) and 35 U.S.C. 154(b)(3)(B). A dispute as to the calculation of the §1.702(a)(1) period raised on request for reconsideration of patent term adjustment under 37 CFR 1.705(d) will be dismissed as untimely filed.

The adjustment is subject to a reduction of 22 days pursuant to 37 CFR 1.704(c)(8). The reduction commenced April 27, 2010 and ended May 18, 2010.

CONCLUSION

Accordingly, for the reasons set forth herein, as of the time of allowance, the application was entitled to an overall adjustment of 60 days (960 days per § 1.703(a) - 900 days for applicant delays per § 1.704).

Receipt is hereby acknowledged of the \$200.00 patent term adjustment application fee required per 37 CFR 1.705(b)(1).

The Office of Data Management has been advised of this decision. This application is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3205.

/ALESIA M. BROWN/

Alesia M. Brown
Petitions Attorney
Office of Petitions

Enclosure: Adjusted PAIR Calculation

Day : Sunday
Date: 10/10/2010

PALM INTRANET

Time: 07:50:06

PTA Calculations for Application: <u>09/689222</u>			
Application Filing Date:	10/11/2000	PTO Delay (PTO):	960
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	175
Post-Issue Petitions:	0	Total PTA (days):	60
PTO Delay Adjustment:	-725		

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
164	10/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		642	
163	10/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		61	
162	10/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		22	
148	06/15/2010	MAIL NOTICE OF ALLOWANCE			
147	06/10/2010	ISSUE REVISION COMPLETED			
146	06/10/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
145	06/10/2010	DOCUMENT VERIFICATION			
144	06/07/2010	EXAMINER'S AMENDMENT COMMUNICATION			
143	06/07/2010	NOTICE OF ALLOWABILITY			
142	06/03/2010	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
141	05/18/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
140	04/26/2010	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
138	05/18/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
137	05/18/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
136	04/26/2010	REFERENCE CAPTURE ON IDS			
135	04/26/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
134	04/29/2010	DATE FORWARDED TO EXAMINER			
133	04/26/2010	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
132	04/26/2010	REQUEST FOR CONTINUED EXAMINATION (RCE)			

131	04/29/2010	DISPOSAL FOR A RCE / CPA / R129			
130	04/26/2010	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
129	04/26/2010	WORKFLOW - REQUEST FOR RCE - BEGIN			
128	03/29/2010	FINISHED INITIAL DATA CAPTURE			
127	02/03/2010	EXPORT TO INITIAL DATA CAPTURE			
126	01/27/2010	ELECTRONIC REVIEW			
125	01/27/2010	EMAIL NOTIFICATION			
124	01/27/2010	MAIL NOTICE OF ALLOWANCE			
123	01/20/2010	ISSUE REVISION COMPLETED			
122	01/20/2010	DOCUMENT VERIFICATION			
121	01/20/2010	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
120	01/20/2010	NOTICE OF ALLOWABILITY			
118	01/12/2010	DATE FORWARDED TO EXAMINER			
117	01/08/2010	AMENDMENT AFTER FINAL REJECTION			
116	01/08/2010	NEW OR ADDITIONAL DRAWING FILED			
115	11/10/2009	MAIL FINAL REJECTION (PTOL - 326)	16		110
114	11/05/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
113	11/09/2009	FINAL REJECTION			
112	08/25/2009	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
111	09/02/2009	DATE FORWARDED TO EXAMINER			
110	06/25/2009	RESPONSE AFTER NON-FINAL ACTION		59	102
109	06/25/2009	REQUEST FOR EXTENSION OF TIME - GRANTED			
108	08/25/2009	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
107	08/20/2009	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
106	08/17/2009	CORRESPONDENCE ADDRESS CHANGE			
105	05/29/2009	EMAIL NOTIFICATION			
104	05/29/2009	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
103	05/20/2009	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
102	01/27/2009	MAIL NON-FINAL REJECTION			
101	01/21/2009	NON-FINAL REJECTION			
100	10/31/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			

99	10/31/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
98	11/11/2008	DATE FORWARDED TO EXAMINER			
97	10/31/2008	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
96	11/11/2008	DATE FORWARDED TO EXAMINER			
95	10/31/2008	REQUEST FOR CONTINUED EXAMINATION (RCE)			
94	11/11/2008	DISPOSAL FOR A RCE / CPA / R129			
93	10/31/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
92	10/31/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
91	10/31/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
90	10/31/2008	WORKFLOW - REQUEST FOR RCE - BEGIN			
89	10/06/2008	CASE DOCKETED TO EXAMINER IN GAU			
88	07/31/2008	MAIL SUPPLEMENTAL NON-FINAL ACTION			
87	07/31/2008	SUPPLEMENTAL NON-FINAL ACTION			
86	07/25/2008	MAIL NON-FINAL REJECTION			
85	07/23/2008	NON-FINAL REJECTION			
84	04/30/2008	INFORMATION DISCLOSURE STATEMENT CONSIDERED			
83	04/30/2008	ELECTRONIC INFORMATION DISCLOSURE STATEMENT			
82	04/30/2008	NEW OR ADDITIONAL DRAWING FILED			
81	05/31/2008	DATE FORWARDED TO EXAMINER			
80	04/30/2008	RESPONSE AFTER NON-FINAL ACTION			
79	04/30/2008	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
78	04/01/2008	CORRESPONDENCE ADDRESS CHANGE			
77	01/30/2008	MAIL NON-FINAL REJECTION	153		67
76	01/29/2008	NON-FINAL REJECTION			
73	11/02/2007	DATE FORWARDED TO EXAMINER			
72	04/30/2007	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
71	10/17/2007	MISCELLANEOUS INCOMING LETTER			
68	11/02/2007	DATE FORWARDED TO EXAMINER			
66	11/02/2007	DISPOSAL FOR A RCE / CPA / R129			
65	09/20/2007	MAIL-PETITION TO REVIVE APPLICATION -			

		GRANTED			
64	04/30/2007	PETITION ENTERED			
63	04/30/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
62	10/27/2006	MAIL ABANDONMENT FOR FAILURE TO RESPOND TO OFFICE ACTION			
61	10/26/2006	ABAND. FOR FAILURE TO RESPOND TO O. A.			
60	06/05/2006	MAIL ADVISORY ACTION (PTOL - 303)			
59	05/30/2006	ADVISORY ACTION (PTOL-303)			
58	12/05/2005	CORRESPONDENCE ADDRESS CHANGE			
57	12/05/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
56	11/09/2005	CHANGE IN POWER OF ATTORNEY (MAY INCLUDE ASSOCIATE POA)			
55	05/24/2006	DATE FORWARDED TO EXAMINER			
54	09/26/2005	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
53	09/26/2005	NOTICE OF APPEAL FILED			
45	07/26/2005	MAIL NON-FINAL REJECTION			
44	07/25/2005	NON-FINAL REJECTION			
43	05/25/2005	DATE FORWARDED TO EXAMINER			
42	05/05/2005	RESPONSE TO ELECTION / RESTRICTION FILED			
41	04/05/2005	MAIL RESTRICTION REQUIREMENT			
40	04/04/2005	REQUIREMENT FOR RESTRICTION / ELECTION			
39	03/22/2005	MAIL ADVISORY ACTION (PTOL - 303)			
38	03/21/2005	ADVISORY ACTION (PTOL-303)			
37	03/15/2005	CASE DOCKETED TO EXAMINER IN GAU			
36	02/19/2005	DATE FORWARDED TO EXAMINER			
35	01/19/2005	AMENDMENT AFTER FINAL REJECTION			
34	02/09/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
33	09/02/2004	REFERENCE CAPTURE ON IDS			
32.7	09/02/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		55	25
32	09/02/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
31	11/13/2000	REFERENCE CAPTURE ON IDS			
30	10/11/2000	REFERENCE CAPTURE ON IDS			
29	11/10/2004	MAIL FINAL REJECTION (PTOL - 326)	1		25
28	11/01/2004	FINAL REJECTION			

27	10/06/2004	CASE DOCKETED TO EXAMINER IN GAU			
26	08/10/2004	DATE FORWARDED TO EXAMINER			
25	07/09/2004	RESPONSE AFTER NON-FINAL ACTION		61	16
24	07/09/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
23	07/09/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
22	07/09/2004	WORKFLOW INCOMING PETITION IFW			
21	07/09/2004	WORKFLOW INCOMING AMENDMENT IFW			
20	07/09/2004	WORKFLOW INCOMING PETITION IFW			
19	07/09/2004	WORKFLOW INCOMING AMENDMENT IFW			
18	04/21/2004	CORRESPONDENCE ADDRESS CHANGE			
17	04/21/2004	CORRESPONDENCE ADDRESS CHANGE			
16	02/09/2004	MAIL NON-FINAL REJECTION	790		-1
15	02/08/2004	NON-FINAL REJECTION			
14	12/09/2003	CASE DOCKETED TO EXAMINER IN GAU			
13	12/09/2003	CASE DOCKETED TO EXAMINER IN GAU			
12	11/03/2003	CASE DOCKETED TO EXAMINER IN GAU			
11	11/12/2002	CASE DOCKETED TO EXAMINER IN GAU			
10	10/04/2002	CASE DOCKETED TO EXAMINER IN GAU			
9.7	03/11/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
9	03/11/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8.7	11/13/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
8	11/13/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7.7	10/11/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	10/11/2000	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	02/16/2001	CASE DOCKETED TO EXAMINER IN GAU			
5	01/31/2001	APPLICATION DISPATCHED FROM OIPE			
4	11/30/2000	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
3	11/29/2000	CORRESPONDENCE ADDRESS CHANGE			
2	10/30/2000	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	10/11/2000	INITIAL EXAM TEAM NN			

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